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No. 03-191

In the
# Supreme Court of the United States

BOSTON UNIVERSITY,

Petitioner,

vs.

UNIVERSITY OF MEDICINE AND DENTISTRY OF NEW JERSEY, AND ALTEC, INC.,

Respondents.

On Petition For Writ of Certiorari
To The Supreme Court of New Jersey

## BRIEF OPPOSING PETITION FOR CERTIORARI ON BEHALF OF RESPONDENT THE UNIVERSITY OFMEDICINE AND DENTISTRY OF NEW JERSEY

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20 pp

## COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

Petitioner is asking this Court to review a decision of the highest state court which: confirmed that(1) a licensed New Jersey attorney must be a member in good standing of the New Jersey bar before being permitted to appear pro hac vice in a New Jersey state court matter; (2)and even though a member in good standing of the bar in another state, a licensed New Jersey attorney could not appear pro hac vice in New Jersey state court while not in good standing in New Jersey.

The counter-statement of questions presented is as follows:

1. Whether this Court shall exercise jurisdiction over the ruling of the Supreme Court of New Jersey which resolved the question of attorney admission and regulation on the exclusive and adequate basis of state law?

2. Whether Petitioner Boston University has standing to invoke this Court's jurisdiction by asserting the interests of its employee, an attorney with a plenary license to practice law by the Supreme Court of New Jersey, regarding his eligibility to practice law in New Jersey courts?

3. Whether the Supreme Court of New Jersey's decision, which conditioned state court pro hac vice admission of its licensee upon his good standing before the New Jersey bar, despite his good standing in another jurisdiction, has such substantial impact upon federally protected interests as to warrant further review by this Court?

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## COUNTER-STATEMENT OF THE CASE

The underlying litigation was initiated in the Superior Court of New Jersey, Law Division, in August 2001 by Petitioner, Boston University (BU) with an order to show cause and complaint on a research contract between BU and the University of Medicine and Dentistry of New Jersey (UMDNJ). (App. 2) Thereafter, BU moved for admission of its employee, Robert B. Smith, Esq., pro hac vice, in June 2002. (App.3) Smith is licensed to practice law in New Jersey, as well as in Massachusetts.[1] In opposing the pro hac vice application, UMDNJ provided the trial court with evidence of Smith's New Jersey license and his ineligibility to practice law in New Jersey by order of the Supreme Court of New Jersey. (App. 92 - 93).[2] Finding the Massachusetts license in good standing to be dispositive, the trial court considered the Order of ineligibility from the New Jersey Supreme Court to be a "non-issue" (App. 14) and Smith was admitted pro hac vice in the underlying contract case on June 21, 2002. (App. 9-11;14 -21) UMDNJ moved the court to reconsider its order admitting Smith pro hac vice, submitting certifications from the Clerk of the Supreme

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[1] Smith became licensed to practice law in New Jersey in 1978. In 1986, he moved to Massachusetts, where he is a member of the bar. Since that time, he has failed to pay his annual fees to the Client Protection Fund as required by N.J.Ct.Rules 1:20-1(b) and 1:28-2. (App.2)

[2] Although Mr. Smith did not disclose in his certifications in support of his pro hac vice application that he is licensed in New Jersey, but not in good standing there,(App. 88-90) his status is not controverted. It is undisputed that, as of September 2001, Smith was in arrears to the New Jersey Lawyers' Fund for Client Security in the amount of $2,659.00, which is a precondition to reinstatement of his good standing in New Jersey. Smith subsequently tendered a payment of $170.00 to the Fund in August 2002. Boston University, 176 N.J. 141, 143, (2003); (App. 2) The New Jersey Supreme Court found Smith's failure to disclose in his certification to the trial court that he is and was ineligible to practice law in New Jersey to be a matter of concern, but determined not to refer the matter to the ethics authorities for further action. Boston University, supra, at 147; (App.7).

Court of New Jersey and the Director of the New Jersey Lawyers' Fund for Client Security, along with additional law, confirming to the trial court that Smith was not considered eligible to practice law in New Jersey by the Supreme Court and that his ineligible status could only be remedied by full payment of his arrears to the Client Protection Fund. The trial court, however, found "no new information" and denied the motion. (App. 22-23) Subsequently, the Appellate Division, New Jersey's intermediary appellate court, granted UMDNJ's motion for leave to appeal, and then on September 18, 2002, the Supreme Court of New Jersey took the matter for review on direct certification. (App. 3)

The Supreme Court of New Jersey, in an opinion based upon application of the New Jersey Rules of Court disagreed with the trial court's understanding of the Court Rules in question and rejected BU's argument that Smith could proceed pro hac vice without disclosing his New Jersey status and solely upon the basis of his good standing in Massachusetts. Boston University v. University of Medicine and Dentistry of New Jersey, 176 N.J. 141, 820 A.2d 1230 (2003)( App. 1 through 8):

> In addition to the prerequisites for pro hac vice admission contained in part a of Rule 1:21-2, part b(1) of that rule provides that those attorneys who are granted pro hac vice status must 'abide by [the New Jersey Court] rules'...This Court's Rule-making authority may be exercised by the promulgation of formal rules to be included in the published Rules of Court [or] in the form of general directives or specific orders....Numerous Orders indicate that Smith may not practice law in this state until he pays his fees to the Client Protection Fund. Those Orders are clear, admit of no exception, and must be enforced strictly by our courts. Accordingly, Smith must pay the fees required by Rules 1:20-1(b) and 1:28-2, including all arrearages, before he may appear pro hac vice....Smith

> has elected to maintain his license to practice law in New Jersey, thereby preserving his right to seek immediate reinstatement as an attorney in good standing. This Court will not sanction Smith's decision to retain that benefit while he disregards his concomitant obligation to the Client Protection Fund. Boston University supra, at 146; (App. 5-6)

The Supreme Court of New Jersey afforded Smith an additional thirty days to comply with its ruling by paying his Client Security Fund arrears, or his pro hac vice admission would be revoked. Boston University, 176 N.J. at 148; (App.8). After the expiration of thirty days, Smith had not complied with the Order and a motion for revocation of his admission pro hac vice was made, upon notice to BU. The motion went unanswered by the Petitioner and on July 11, 2003, Smith's pro hac vice admission was revoked. (App. 24-25). On that same day, another lawyer employed by Boston University was admitted by the trial court, pro hac vice in the underlying litigation.

## REASONS FOR DENYING THE WRIT

### I. THE DECISION OF THE NEW JERSEY SUPREME COURT RESOLVED THE QUESTION OF A NEW JERSEY ATTORNEY'S PRO HAC VICE ADMISSION AND REGULATION BY THE NEW JERSEY SUPREME COURT EXCLUSIVELY AND ADEQUATELY UPON THE BASIS OF NEW JERSEY LAW.

The essential subject matter of the decision below pertains to New Jersey rules of attorney admission to practice law and attorney discipline. These regulatory functions are within the exclusive and plenary power of the Supreme Court of New Jersey, granted under the state Constitution, N.J. Const. Art. VI, §2, par 3. Boston University, supra, 176 N.J. at 144; (App. 3-4) The focus of the decision was the proper application of the

state's pro hac vice rule, R. 1:21-2(a) of the Rules Governing the Courts of the State of New Jersey. The court also addressed an attorney's obligation of candor to the court. Rules of Professional Conduct, RPC 3.3(a)(5), and the obligations attendant to a New Jersey license to practice law. Boston University, supra, 176 N.J. at 146. (App. 5-7).

It is well- settled, that "the States should be left free to 'prescribe the qualifications for admission to practice and the standards of professional conduct' for those lawyers who appear in its courts." New Hampshire v. Piper, 470 U.S. 274, 283 n. 16 (1985). The independence of the New Jersey Supreme Court's state grounds for its unanimous decision below is "apparent from the four corners of the opinion." Michigan v. Long, 463 U.S. 1032, 1040 (1983). Only New Jersey state court rules and New Jersey case law were relied upon to reach its unanimous decision.[3] Thus, from the face of the opinion, it is clear that the state court did not rely or refer to federal law or issues in any way in reaching its decision. As well, as further discussed in Point II and Point III, infra, the court's ruling does not impinge on any cognizable interests of the Petitioner or its employee, Mr. Smith. Under these circumstances, and following the guidance of Justice O'Connor in Michigan, supra, the Court can be confident that there were adequate and independent state grounds for the unanimous decision of the Supreme Court of New Jersey below. Consequently, this Court should decline jurisdiction and reject the petition for a writ of certiorari.

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[3] The court made a supplemental, post-argument, factual inquiry of Smith directly, giving him the opportunity to explain his failure to reveal his New Jersey license to the court as well as his failure to pay his fees for some seventeen years.. Although it is not part of the record submitted by the Petitioner, it is referred to in the Boston University opinion appearing at (App.7: "Smith asserts...that he was 'not entirely clear' concerning his status before the New Jersey Bar, and that he never intended to mislead the trial court or UMDNJ." )

## II. BOSTON UNIVERSITY DOES NOT HAVE STANDING TO INVOKE THE JURISDICTION OF THIS COURT BY ASSERTING THE INTERESTS OF ITS EMPLOYEE, AN ATTORNEY WITH A PLENARY LICENSE TO PRACTICE LAW IN NEW JERSEY, REGARDING HIS ELIGIBILITY TO PRACTICE LAW IN NEW JERSEY COURTS.

The Petitioner, Boston University has not produced evidence sufficient to demonstrate that it is the proper party to invoke judicial resolution of the federal questions it presents in the petition. Warth v. Seldin, 422 U.S. 490, 518 (1975) made clear that it is the responsibility of the party seeking to invoke this Court's remedial powers "to allege facts demonstrating that he is a proper party to invoke" those powers. Boston University is obligated to demonstrate that the three elements which are the "irreducible minimum" of standing before this Court have been met. United States v. Hays, 515 U.S. 737, 742 (1995). First, the Petitioner must demonstrate to the Court's satisfaction that it has suffered an "injury in fact," i.e., "an invasion of a legally protected interest." Hays, supra, 515 U.S. at 742-743, quoting from Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-561 (1992). "Second, there must be a causal connection between the injury and the conduct complained of." Id. "Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision" of this Court. Id.

As a threshold matter, BU has failed to demonstrate how it was injured by application of the Rules Governing the Courts of the State of New Jersey, as they affect attorney admission and regulation by the New Jersey Supreme Court. Nor has it articulated any legally-protected interest which is affected by the application of the rules in question. Generally, unless otherwise provided by statute, a litigant has no standing to assert the rights of a third party. Valley Forge Christian College v. Americans United for Separation of Church & State, Inc., 454 U.S. 464, 474 (1982)(quoting Warth v. Seldin, supra, 422

U.S. at page 499). This Petitioner has not articulated any legally-protected interest in the admission of its employee Smith, in the New Jersey courts, pro hac vice. Indeed, insofar as another Boston University employee is now admitted pro hac vice in the underlying litigation, it would appear that the issue is moot.

Even if BU had sufficiently demonstrated a legally-protected interest which was impinged upon by the Supreme Court of New Jersey's ruling, it could not then demonstrate that the injury was caused by the application of the rules in question. Hays, supra, 515 U.S. at 743. In this case, it is Smith's own conduct which caused the injury to any allegedly protected interest. See, Tolchin v. Supreme Court of the State of New Jersey, 111 F.3d 1099 (3rd Cir.), cert.denied, 525 U.S. 977 (1997) (Tolchin, who challenged certain of New Jersey's rules of attorney admission, was not excluded from practicing law in New Jersey by the state's rules, but by his own actions.) The Supreme Court of New Jersey focused upon Smith's conduct in rendering its decision. The court had jurisdiction over the conduct of Smith as a lawyer licensed to practice law in New Jersey, and exercised its disciplinary jurisdiction over him by issuing annual orders declaring his ineligibility to practice law in New Jersey for having ignored the financial obligations of his New Jersey license.

Boston University does not have a legally-protected interest in the conduct of its employee before the state licensing authority which issued Smith his plenary license, nor has it asserted one, nor has it asserted any basis for claiming such an interest or an injury thereto.

The Petitioner having failed to demonstrate even the first or second of the three "irreducible minimum" elements of standing to satisfy Art. III, §2 its Petition for a Writ should be denied for lack of standing to invoke the Art. III jurisdiction of this Court.

## III. APPLICATION BY THE SUPREME COURT OF NEW JERSEY OF ITS OWN RULES GOVERNING THE ADMISSION AND DISCIPLINE OF LAWYERS LICENSED IN NEW JERSEY IN DETERMINING PRO HAC VICE APPLICATIONS DOES NOT THREATEN INTERESTS PROTECTED BY THE FOURTEENTH AMENDMENT, ART. IV, §2 PRIVILEGES AND IMMUNITIES CLAUSE OR THE COMMERCE CLAUSE OF ART. I OF THE UNITED STATES CONSTITUTION AND THUS PRESENTS NO SUBSTANTIAL FEDERAL QUESTION WARRANTING REVIEW BY THIS COURT.

Boston University invites this Court to review the unanimous decision of the Supreme Court of the State of New Jersey regarding its regulation of its own licensee by urging that there are interests involved in this matter which are protected by the Fourteenth Amendment (Due Process and Equal Protection) , Art. IV, §2, (Privileges and Immunities Clause) and Art. I, §8 (Commerce Clause) of the Constitution of the United States. Each of these arguments has been settled by the law of the land as articulated by this Court. Therefore, there is no substantial federal question presented to trigger this Court's plenary power of review.

### A. FOURTEENTH AMENDMENT

**The decision of the Supreme Court of New Jersey was not hostile to the Due Process Clause.**

First among the Petitioner's arguments is its assertion that its employee, Robert B. Smith, was denied procedural due

process by the ruling of the Supreme Court of New Jersey. [4] Boston University does not allege, however, that Smith did not receive notice of his status before the New Jersey Bar. The fact of Smith's receipt of annual Orders of ineligibility from the Supreme Court of New Jersey for every one of the seventeen years that he refused to pay his fees to the Client Security Fund, was not contested by the Petitioner. It complains rather, that a "new" interpretation of R. 1:21-2(a) was impermissibly applied retroactively to Smith. The facts show otherwise.

In order to persuade this Court that its employee, Smith, was deprived of due process in the application of the New Jersey pro hac vice rule, BU must establish just what process Smith was due under the circumstances. Board of Regents of State Colleges, et al. v. Roth, etc., 408 U.S. 564, 570-571 (1972). This requires that the nature of the interest at stake be examined. Id. Smith's interest in a pro hac vice admission in the underlying litigation is what Petitioner argues should be protected by the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. However, it is well-settled that the right to practice law, is not a fundamental right for purposes of the Fourteenth Amendment Due Process or Equal Protection analyses. Leis v. Flynt, 439 U.S. 438, 441-442 (1979). Moreover, pro hac vice applicants have no cognizable property interest within the terms of the Fourteenth Amendment. Id. Thus, as recognized in Leis, the Ohio courts had no constitutional obligation to afford the applicants procedural due process in passing on their application for permission to appear pro hac vice in Ohio state court. Id. Accord, Paciulan v. George, 38 F. Supp. 2d 1128, 1138 (N.D. CA 1999), aff'd by 299 F.3d 1226 (9th Cir. 2000), cert. denied 531 U.S. 1077 (2001), (fundamental privileges and

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[4] It also claims that the court "admitted" that the New Jersey pro hac vice rule was poorly drafted and required clarification,..." (P16). This is false. Nowhere in the opinion of the court was there such language.

immunities are not interchangeable with the rights deemed 'fundamental' for equal protection purposes.)

Smith may have had an expectation that he would enter the underlying litigation, pro hac vice, but this expectation was not created by statute or by rule. Nor is Smith's putative expectation worthy of greater protection than the well-recognized authority of the state to establish rules for the admission to the practice of law and its regulation. New Hampshire v. Piper, supra, 470 U.S. page 283, n. 16 (citing Leis v. Flynt, supra, 439 U.S. at page 442). BU has failed to "make out an injury to a constitutionally protected interest. There simply was no deprivation here of some right previously held under state law." Leis v. Flynt, supra,439 U.S. at page 443.

Petitioner, Boston University, has not articulated an injury to a constitutionally protected interest, either its own, or its employee Smith's. The law is well established that an attorney has no federally protected interest in an admission pro hac vice.[5] No interest having been established, the Petitioner also does not explain to the Court exactly what process Smith was due, that he did not receive. It further did not establish that N.J.Ct. R. 1:21-2(a) was enforced by the Supreme Court of New Jersey in an arbitrary or discriminatory manner, or in any way hostile to federally protected interests. Therefore, the Petitioner has not established a substantial federal question under the Due Process Clause of the Fourteenth Amendment and the writ should be denied on that basis.

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[5] Nor is there a constitutionally protected interest held by the Petitioner in Smith's admission pro hac vice. Kohlmayer v. National Railroad Passenger Corp., 124 F. Supp. 2d 877, 883 (D. N .J. 2000) (while plaintiff's interest in counsel of choice is an important consideration, it does not rise to the level of the interest of a criminal defendant to counsel of choice, protected by the Sixth Amendment.)

## B. Fourteenth Amendment

**The ruling of the Supreme Court of New Jersey does no harm to interstate migration.**

Likewise, there is no substantial federal question presented by the Petitioner in its assertion that its employee is burdened in his right to interstate migration by application of New Jersey's pro hac vice rule. (P23) As the Court has recognized:

> the right to migrate protects residents of a State from being disadvantaged, or from being treated differently, simply because of the timing of their migration, from other similarly situated residents. Attorney General of New York v. Soto-Lopez, 476 U.S. 898, 904 (1986).

Petitioner admits that the pro hac vice rule in question is facially neutral in its treatment of "out-of-state" attorneys. (P24-25). The rule also treats all New Jersey licensed attorneys equally, as does Rule 1:20-1(b) and Rule 1:28-2, which require certain fees to be paid in full before being eligible to appear pro hac vice. Boston University, supra, 176 N.J. at 146; (App.5-6) Smith is no more burdened than any other attorney licensed in New Jersey, irrespective of residence. Id.

Petitioner nevertheless complains on behalf of its employee Smith, that he is being "penalized for having once practiced in New Jersey." (P23) The New Jersey Supreme Court held that "Smith has elected to maintain his license to practice law in New Jersey, thereby preserving his right to seek immediate reinstatement as an attorney in good standing." Boston University, supra, 176 N.J. at 146; (App. 5-6). This privilege comes with conditions. Id. Petitioner, on behalf of Smith, tries to ignore the fact of Smith's New Jersey license. The annual assessment of fees on all New Jersey licensed attorneys promotes a legitimate state function of protecting the public against dishonest conduct of attorneys who are members of the bar of New Jersey. The obligations are applied equally

to New Jersey residents and non-residents alike. There being no distinction drawn on the basis of residence, or duration of residence, there patently is no basis for Petitioner's argument that New Jersey's pro hac vice rule impairs interstate migration.

## C. PRIVILEGES AND IMMUNITIES CLAUSE

**Nor does the Supreme Court of New Jersey's decision effect any insult the Privileges and Immunities clause.**

The rules in question apply equally to all attorneys, whether they reside within or without the state of New Jersey. "If a state statute or regulation imposes identical requirements on residents and nonresidents alike and it has no discriminatory effect on nonresidents, it does not violate the Privileges and Immunities Clause." Tolchin v. Supreme Court of New Jersey, 111 F.3d 1099, 1111 (3d Cir.), cert.denied, 522 U.S. 977 (1997).

Under the Rule in question, all attorneys admitted in New Jersey of good standing, who do not maintain a bona fide office for the practice of law in New Jersey, may be permitted to appear pro hac vice, in the same way that a New Jersey attorney who does maintain a bona fide office for the practice of law in this state, and is therefore authorized to practice in New Jersey.[6]

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[6] The relevant portions of Rule 1:21-2(a)in 2002, read as follows:

> Conditions for Appearance: An attorney of any other jurisdiction, of good standing there,... or an attorney admitted in this state, of good standing, who does not maintain in this state a bona fide office for the practice of law may, ...,be permitted, pro hac vice, to speak in such matter in the same manner as an attorney of this state who maintains a bona fide office for the practice of law in this state and who is therefore, pursuant to R. 1:21-2(a) authorized to practice in this state. No attorney shall be admitted under this rule without

But no attorney will be admitted to speak pro hac vice unless Rules 1:20-1(b) and 1:28-2 are annually complied with during the period of admission.[7] Smith is prohibited from practicing law in New Jersey, not because of his residence, but because he has not fulfilled the requirements for admission, i.e., he has chosen to shirk his financial obligations incurred as a member of the New Jersey bar. Id.[8] No basis for invocation of the Privileges and Immunities Clause of Art. IV, §2 of the United States Constitution having been demonstrated, this argument for granting the writ must fail as not presenting a substantial federal question for the Court's review.

## D. COMMERCE CLAUSE

Petitioner fails to show how Smith's payment of his obligations to his New Jersey license to practice law would burden interstate commerce. Incredibly, Petitioner asserts that Smith's good standing in Massachusetts is "invalidated" by the Supreme Court of New Jersey Orders of nearly two decades, that he pay his arrears to the New Jersey Lawyers' Fund for Client Protection, (and other fees), before he is eligible to practice law in New Jersey. (P27) It is further claimed that payment of his arrears to New Jersey prevents him from engaging in commerce. (P28) These claims are entirely unsubstantiated.

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annually complying with R. 1:20-1(b) and R. 1:28-2 during the period of admission...

[7] For New Jersey licensed attorneys, the period of admission is coextensive with the license. Boston University v. University of Medicine and Dentistry of New Jersey, 176 N.J. at 146 (2003).

[8] In its brief in support of its Privileges and Immunities argument, Petitioner asserts "the right to practice law pro hac vice in New Jersey." (P19) There is no such "right" recognized by this Court. Leis v. Flynt is still controlling. Thus, the assertion of said "right" is wholly without merit.

Avoidance of the obligations of a license to practice law in New Jersey on the basis of the Commerce Clause of the United States Constitution, was substantially addressed in Tolchin v. Supreme Court of New Jersey, supra, with regard to New Jersey's bona fide office requirement. Here, like in Tolchin, annual payment of fees applies to resident and non-resident attorney alike. It is distinguishable, however, in that the Third Circuit found that the bona fide office requirement affected interstate commerce because "it limits the mobility of some lawyers," Id. at 1109. The same cannot be said for payment of annual fees, in exchange for good standing before the New Jersey bar. Any lawyer who holds a plenary license to practice law in New Jersey, but who does not have a bona fide office for the practice of law in the state,whether or not a New Jersey resident, can only be admitted to be heard in state court upon application pro hac vice of another New Jersey lawyer who does have a bona fide office in the state. R. 1:21-2(a). If either of those attorneys has defaulted on payments as required by the Rules of Admission and Disciplinary Rules, each would be prevented from practicing law in New Jersey courts unless and until the payments are brought current. Id. This is the "good standing" requirement. The application of the rules does not depend upon residency of the attorney. The Commerce Clause is thus not implicated.

Imposing a burden upon the legal profession in New Jersey in order to safeguard the public from "the dishonest conduct of members of the bar of this State" N.J.Ct.R. 1:28-1(a), furthers a "'legitimate interest' within the boundaries of New Jersey." A.S. Goldmen & Co., Inc. v. New Jersey Bureau of Securities, 163 F.3d 780 (3d Cir. 1999), cert.denied 528 U.S. 868 (1999). Any extraterritorial effects of the regulation of New Jersey attorneys by the New Jersey Supreme Court have not been articulated by the Petitioner. As the New Jersey Supreme Court stated, "Smith's decision" to retain the benefit of his New Jersey license "while he disregards his concomitant obligation to the Client Protection Fund" will not be permitted. Boston University supra, 176 N.J. at 146. If there is an

extraterritorial effect, or burden on interstate commerce "in some incidental way," it is not enough to support Petitioner's position, or to create hostility to a federally protected interest.

Petitioner argues that New Jersey's pro hac vice rule as applied by the New Jersey Supreme Court prevents Smith from "engaging in commerce" (P28) and also argues that it forces him to pay a tax when he does not engage in commerce in New Jersey.(P29) In fact, just as in Tolchin, supra, Smith's "inability to practice law (in New Jersey) is due to his own actions and not to any constitutional...violation." Smith chose his own path. The Petitioner's arguments would "permit Smith to practice law before New Jersey courts while freely shirking the financial obligations he incurred as a member of this state's bar." Boston University, supra, 176 N.J. at 146. Any impact of the rules in question and of Smith's choice to shirk the obligations imposed by those rules is focused in New Jersey and its affect outside the State is at best, insubstantial and does not rise to the level of a substantial federal question for this Court's review.

## CONCLUSION

For all of the above-stated reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Dated: September 5, 2003